



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Morse Boulger, Inc.--Request for Costs
File: B-224305.2
Date: November 4, 1988

DIGEST

Award of costs of filing and pursuing protest, including attorneys' fees, is granted where initial decision sustained protester's challenge to restrictive design specifications which unreasonably excluded protester from competition.

DECISION

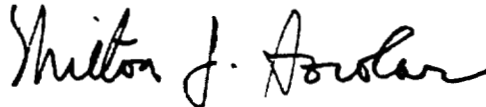
By this decision, we award Morse Boulger, Inc. (MBI), its costs of filing and pursuing its protest, including attorneys' fees.

MBI initially protested, in September 1986, the Department of the Navy's use of unduly restrictive design specifications in invitation for bids (IFB) No. N62470-83-B-8778 for replacement of two Detroit Stoker Company incinerator grates (stokers). The IFB restricted bidders to the Detroit Stoker proprietary design. In our original decision, we held that the Navy had failed to make a prima facie showing that it required the protested restrictions to meet its actual needs, and recommended that the Navy cancel the solicitation, revise its requirements as appropriate, and resolicit. Morse Boulger, Inc., B-224305, Dec. 24, 1986, 66 Comp. Gen. ___, 86-2 CPD ¶ 715.

The Navy has advised our Office that the solicitation was canceled; however, during its review of the requirement the Navy discovered that the facility would produce quantities of toxic wastes. The cost of resolving the environmental issue is expected to exceed available funding. Consequently, the procurement is on indefinite hold, and will not be resolicited, until funding is available for the stoker replacement and to resolve the environmental concerns.

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Under these circumstances, we find that MBI is entitled to recover the costs of filing and pursuing the protest, including attorneys' fees. See Competition in Contracting Act of 1984, 31 U.S.C. § 3554(c)(1)(A) (Supp. IV 1986). MBI should submit its claim for reimbursement of these costs directly to the Navy, and if the parties cannot reach agreement within a reasonable time, our Office will determine the appropriate amount to be paid. Bid Protest Regulations, 4 C.F.R. § 21.6(e) (1988).

A handwritten signature in cursive script, reading "Milton J. Fowler".

Acting Comptroller General
of the United States